

**ORIGINAL**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of the Commission's )  
Rules Regarding Installment Payment )  
Financing For Personal Communications )  
Services (PCS) Licensees )  
 )

WT Docket No. 97-82

**REPLY COMMENTS**

Third Kentucky Cellular Corp. (Third Kentucky) respectfully submits these comments in the above-captioned proceeding.<sup>1</sup>

Third Kentucky is the C Block licensee for the Corbin, KY market and the F Block licensee for the Corbin, Somerset, and Middlesboro-Harlin markets and the surrounding rural areas. We plan to build and operate a high quality, digital wireless network offering affordable service to rural parts of Kentucky. As president and sole owner of Third Kentucky, I presently employ ten people with plans to grow significantly larger as the company becomes operational. The jobs we plan to create will be high-tech, high paying jobs for people in Kentucky.

<sup>1</sup> Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licenses, Second Report and Order, WT Docket No. 97-82, FCC 97-342, rel. Oct. 16, 1997 ("Restructuring Order").

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## **Introduction**

We have carefully reviewed the Oppositions to Petition for Reconsideration filed in this proceeding. We note that with the exception of a few companies, most petitioners believe that the FCC's restructuring decision does not provide licensees with a commercially reasonable solution to bankruptcy.

We continue to believe the Commission should modestly adjust the terms of the Disaggregation and Prepayment options to allow full use of the licensees' down payment. Furthermore, under the Prepayment option, licensees should be afforded the opportunity to purchase licenses at the net present value of the net high bid, using a discount rate of at least 15 percent.

## **Modifications Will Not "Rewrite" the Outcome of the Auction And Will Not Harm Auction Integrity**

All companies that bid in the C-Block made certain assumptions about the direction of the market that may have been valid at the time, but were undermined by significant, unprecedented, and unanticipated changes in the financial, regulatory, and legal arenas.

Shortly after the close of the C-Block auction, the Commission significantly modified the rules governing the DEF Block auction, making changes which included higher down payment amounts and a shorter interest-only repayment period for F-Block licenses. Such changes contributed to the significantly lower prices paid in the DEF-Block auction compared to the prices paid in the C-Block auction, and undermined investor confidence in the viability of some C-Block licensees.

Later, Congress mandated that the Commission conduct an auction for Wireless Communication Service ("WCS") spectrum, unsettling financial markets and creating

increased uncertainty about the supply of new spectrum that might be dumped onto the market to solve budgetary problems. The WCS auction was hastily organized, and many potential participants were unclear about the technological limitations of the band.

Nonetheless, the auction proceeded, and yielded only \$13.6 million, far less than the \$1.8 billion that was expected. Some licenses went for as little as \$1 dollar. According to the attached Wall Street Journal article:

Congress hurried the auction because it wanted to plug a hole in the budget. This meant potential bidders didn't have time to develop business plans and line up financing. Telecommunications equipment makers weren't sure what to build or what to spend, because the FCC didn't designate the spectrum for a particular use.<sup>2</sup>

The damage had already been done when Congress mandated the auction; however, the repercussions of the WCS auction reverberated across the entire industry, and further eroded investor confidence in the C-Block. One of the largest bidders, Pocket Communications, Inc., was forced to seek Chapter 11 bankruptcy proceedings shortly before the start of the WCS auction. The low bids in the WCS auction simply sealed the fate of small businesses.

The question is whether somehow, in light of subsequent events, restructuring relief would be unfair. Appendix A, B, and C lists the highest bids placed by three companies that have submitted comments opposing relief. We maintain, as the charts indicate, AirLink, L.L.C. (an affiliate of AirGate Wireless, L.L.C.), GO Communications, and U.S. AirWaves all placed bids that, in light of recent events, appear to be unfinanceable.

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<sup>2</sup> See The Wall Street Journal, "Dollar Days; Sale of FCC Licenses In Several States Nets Budget Pocket Change; Public Airwaves Went Cheap After Congress Pushed Agency for Fast Auctions," (June 3, 1997).

Fidelity Capital, an investor in GO Communications (“GO”), notes that “GO was forced to withdraw from the C-Block auction without obtaining any licenses because the auction prices soon reached levels beyond which its rational business model could still forecast profitability and ensure a reasonable return on investment.”<sup>3</sup> However, as noted in Appendix B, GO placed a final bid in the Los Angeles market of \$41.35 per POP. We do not question whether GO’s “rational business model” could yield a “reasonable return” based on assumptions that were valid at the time. However, in light of subsequent financial and regulatory events, and given that the F-Block license sold for \$0.31 per POP (less than 1% of GO’s final bid), we question whether GO’s bid could yield a reasonable return under today’s assumptions.

Some disappointed bidders and their investors claim that had they known that the installment payment plans would be changed at a later date, they may have bid differently. Thus, the disappointed bidders argue that they would be harmed by any modifications to the Commission’s rules regarding license values. We strongly disagree with this assertion.

During the auction, no bidder based its bids on an expectation that the FCC would adjust its installment payment terms. All bidders bid in good faith, and within limits set by internal financial models. Companies with unique business plans and higher expected rates of return could justify higher bid amounts than companies with more conservative models. However, while business plans varied greatly through the auction’s 255 participants, given the high bids submitted by even disappointed bidders, the underlying assumptions about the financial and regulatory arena appear to have been the same or similar for most bidders. Today we know that, as a result of financial, regulatory, and legal change, circumstances

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<sup>3</sup> See Fidelity Capital, WT Docket 97-82, (December 30, 1997).

differed in a dramatic and unforeseeable manner from these rational assumptions about the future. We believe that such changes more than offset the changes in the value of the licenses that modest adjustments to the installment payment plan might produce.

For example, assume that the Commission provides licensees with a menu option that defers principal and interest payments. Disappointed bidders argue that this would “rewrite” the outcome of the auction, and that had such bidders known of such changes, they may have bid differently. With the wisdom of hindsight, we now know that even if some disappointed bidders did win licenses at the highest amounts they bid, today they would be unable to finance their build outs. Under today’s assumptions, it is unreasonable to think that GO Communications would have bid more than \$41.35 per POP for Los Angeles even if it knew the Commission would later grant a deferral because the market values Los Angeles, based on the net amount bid in F-Block, for around \$0.31 per POP. Had the GO bid prevailed, they might today be joining us in our request for relief at the Commission.

One of the fundamental underlying premises to which opponents of restructuring appeal is that restructuring is unfair to disappointed bidders and will harm auction integrity. However, a closer look at the C-Block auction extinguishes all doubt that not only did the disappointed bidders participate in the intense bidding that elevated prices to levels that contributed to the unprecedented financial crisis experienced by many C-Block licensees, but many of the bids placed by disappointed bidders appear to be unfinanceable in today’s market as the ones such bidders disparage.

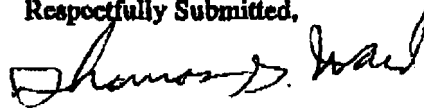
It is common knowledge that the C-Block auction was intensely competitive, much more so than the A- and B-Block auction, and largely as a result of the Commission’s effort

to publicize this opportunity for small businesses. The eligibility ratio for the C-Block auction was 6.75, compared to the A- and B-Block auction eligibility ratio of 1.93 and D-, E-, and F-Block auction eligibility ratio of 1.60. This suggests that no one company led to the relatively high bid prices, but that bidders collectively increased prices.

### Conclusion

Modest modifications to the FCC's *Restructuring Order* are necessary to promote new competition and avert new bankruptcy filings. The modifications suggested are commercially reasonable, will foster facilities-based competition, and will provide consumers, perhaps for the first time, with new, affordably priced wireless services.

Respectfully Submitted,



## Appendix A

### Selected Bids of AirLink, L.L.C.

Market	Net Bid	Net PPP	F-Net-PPP
W Palm Beach, FL	\$ 47,452,184	\$ 39.85	\$ 2.80
Naples, FL	\$ 6,682,186	\$ 32.95	\$ 6.67
Ft Myers, FL	\$ 18,092,186	\$ 28.30	\$ 8.35
Miami, FL	\$ 101,088,112	\$ 23.18	\$ 8.49
Chicago, IL	\$ 252,728,992	\$ 23.17	\$ 2.82
Ft Pierce, FL	\$ 10,222,186	\$ 22.46	\$ 9.14
Richmond, VA	\$ 30,975,112	\$ 21.30	\$ 3.14
Grand Rapids, MI	\$ 25,882,000	\$ 21.19	\$ 0.93

## Appendix B

### Selected Bids of GO Communications Inc.

Market	Net Bid	Net-PPP	F-Net-PPP
Miami, FL	190,467,180	\$ 58.24	\$ 8.49
W Palm Beach, FL	45,907,137	\$ 51.40	\$ 2.80
New York, NY	901,709,088	\$ 49.95	\$ 4.17
Houston, TX	189,023,256	\$ 46.62	\$ 1.88
Phoenix, AZ	106,159,392	\$ 44.15	\$ 12.58
Boston, MA	173,286,564	\$ 41.92	\$ 1.62
Tampa, FL	93,180,012	\$ 41.42	\$ 2.65
Los Angeles, CA	601,679,088	\$ 41.35	\$ 0.31
Philadelphia, PA	240,976,944	\$ 40.85	\$ 3.74
Orlando, FL	49,668,417	\$ 39.53	\$ 2.81
Austin, TX	33,052,500	\$ 36.75	\$ 1.93
Naples, FL	5,525,326	\$ 36.33	\$ 6.67
Ft Myers, FL	17,319,000	\$ 36.12	\$ 8.35
San Diego, CA	87,384,600	\$ 34.98	\$ 4.59
Salt Lake City, UT	44,966,250	\$ 34.38	\$ 0.91
San Antonio, TX	50,963,568	\$ 33.29	\$ 1.10
Ft Pierce, FL	9,786,000	\$ 28.67	\$ 9.14
New Orleans, LA	35,553,000	\$ 26.00	\$ 5.96
Detroit, MI	121,783,176	\$ 25.88	\$ 1.35
Providence, RI	36,568,494	\$ 24.22	\$ 0.87
Dallas, TX	102,689,256	\$ 23.72	\$ 3.70
Atlantic City, NJ	7,552,500	\$ 23.64	\$ 3.46
Seattle, WA	56,109,750	\$ 20.71	\$ 3.77
Tulsa, OK	16,901,250	\$ 20.20	\$ 1.55
Atlanta, GA	64,162,500	\$ 20.07	\$ 7.90
Washington, DC	82,408,500	\$ 20.01	\$ 2.15



## Appendix C

### Selected Bids of U.S. AirWaves Inc.

Market	Net Bid	Net-PPP	F-Net-PPP
Washington, DC	158,765,256	\$ 38.55	\$ 2.15
Dallas, TX	166,524,000	\$ 38.46	\$ 3.70
Atlanta, GA	119,918,256	\$ 37.51	\$ 7.90
Los Angeles, CA	545,221,488	\$ 37.47	\$ 0.31
San Francisco, CA	234,510,000	\$ 36.52	\$ 0.68
Philadelphia, PA	214,899,744	\$ 36.43	\$ 3.74
Houston, TX	137,436,744	\$ 33.90	\$ 1.88
New York, NY	598,617,744	\$ 33.16	\$ 4.17
Miami, FL	101,832,744	\$ 31.14	\$ 3.97
Baltimore, MD	69,792,000	\$ 28.71	\$ 1.12
Phoenix, AZ	63,505,500	\$ 26.41	\$ 12.58
Boston, MA	106,592,256	\$ 25.78	\$ 1.79
Chicago, IL	189,547,500	\$ 23.17	\$ 2.82
Seattle, WA	62,214,750	\$ 22.97	\$ 3.77
Richmond, VA	24,570,000	\$ 22.52	\$ 3.14
Minneapolis, MN	63,789,750	\$ 22.46	\$ 0.53
Tampa, FL	47,100,750	\$ 20.94	\$ 2.65